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REMARKS

Claims 1-6, 8, 9, 11, 12, 15, 16, 18-23, 26-28, 31-43, 45, and 49-62 are now pending in this reissue application. Claims 24, 25, 29, and 30 have been canceled without prejudice and without disclaimer of subject matter. Claims 26 and 31 have been amended to depend on respective Claims 23 and 28, only, and are no longer in multiply-dependent form. Claims 58-62 have been added to provide Applicants with a more complete scope of protection.

Although the Office Action Summary states that Claims 1-5 and 42 are rejected, no explanation for their rejection is given in the Office Action, and those claims are not addressed on the merits at all in the Office Action. In a telephone conversation between Applicants' undersigned representative and the Examiner on or about August 20, 2002, the Examiner confirmed that the Office Action Summary's reference to Claims 1-5 as being rejected is erroneous, and that those claims are in fact not rejected. In any event, in view of the Office Action's failure to substantively address Claims 1-5 and 42, it is respectfully submitted that any next office action must be made non-final.

In the Office Action, Claims 6-11, 23-32, 36, 37, 43, 45, 49, 50, 52, 53, and 55-57 were rejected under 35 U.S.C. § 251 as being an improper recapture of previously surrendered subject matter, and Claims 12, 15, 16, 18-21, 33-35, 38, 41, 51, and 53 also were rejected under 35 U.S.C. § 251 for the same reason. Apparently, the Examiner believes that the mentioned claims recapture subject matter previously surrendered from Claims 141, 137, and 144 of Application No. 08/479,000 (which matured into U.S. Patent 5,759,080), although the

Office Action does not state this explicitly. Claim 22 was objected to as depending from a rejected claim, but would be allowable if rewritten in independent form and with no change in scope.

Initially, cancellation of Claims 24, 25, 29, and 30 renders their rejection moot. Also, Claims 7 and 10 were cancelled in the Amendment filed on November 5, 2001, and thus their rejection also is deemed moot.

According to MPEP § 1412.02, the following test is used to determine whether recapture applies. First, the Examiner must identify some aspect of the claim which he believes is being broadened in the reissue application (e.g., a reissue claim that deletes a limitation or element from the patent claims is broader in that limitation's aspect). Then, assuming a claim is being broadened, the Examiner must determine whether the broadened aspects of that claim relate to subject matter that the applicant previously surrendered during the prosecution of the original patent.

In *Pannu vs. Storz Instruments, Inc.*, 258 F.3d 1366 (Fed. Cir. 2001), the Court of Appeals for the Federal Circuit restated the test for recapture as follows. The first part of the test is to determine whether and in what aspect the reissue claims are broader than the patent claims, the second part involves determining whether the broader aspects of the reissue claims relate to surrendered subject matter, and the third part of the test is to determine whether the reissue claims were materially narrowed in other respects to avoid the recapture rule. *Pannu*, 258 F.3d at 1371.

In *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472 (Fed. Cir. 1998), the Federal Circuit held that "[a]rguments made to overcome prior art can . . . evidence an admission

sufficient to give rise to a finding of surrender.” *Id.* at 1481. The Court also stated that where surrender occurs by way of arguments alone, the reissue claims must be analyzed “to determine if they were obtained in a manner contrary to the arguments on which the surrender is based.”

*Hester Industries, Inc.*, 142 F.3d at 1482.

Applicants respectfully traverse the Section 251 rejections set forth in the Office Action for the following reasons.

Initially, page 4, lines 12-15 of the Office Action states that “Although these [reissue] claims are more narrow in other respects they do not avoid the recapture rule since none of these claims contain limitations that relate to the . . . limitations which were relied upon to secure the patent”, and page 5, lines 6-10 of the Office Action makes a similar statement. However, according to Applicants’ understanding, the determination as to whether reissue claims are narrowed in respects to avoid recapture generally involves determining whether the reissue claims are narrowed in a material respect compared with their broadening (as opposed to determining, as the Office Action asserts, whether the reissue claims include limitations related to claim features relied on to obtain a patent). *See, e.g., Pannu*, 258 F.3d at 1372. Applicants are not aware of any case law or U.S. Patent and Trademark Office (USPTO) rules which would support the Office Action’s specific articulation of what would constitute a narrowing sufficient to avoid recapture, and thus it is believed that the Office Action’s articulation is in error. For this reason, Applicants respectfully submit that the Office Action has mis-applied the relevant portion of the recapture test, and therefore has failed to establish sufficiently that the rejected reissue claims are *not* narrower in respects to avoid an improper recapture of surrendered subject matter.

If, after considering the foregoing remarks, the Examiner still believes

otherwise, he is respectfully requested to cite specific case law or USPTO rules which he believes supports his articulation of the relevant part of the recapture test.

#### Comments Regarding Claim 141

With regard to Claim 141, the Office Action states that the claim “was argued [in the Amendment of December 4, 1996 of Application No. 08/479,000] to be patentable . . . because ‘By contrast, in claims 141-143 of the present invention it is the fine particles between the electrodes that is the goal of the present invention[, w]hereas injected ions act as independent atoms . . . , the dispersed fine particles are bulky in nature and do not act as individual atoms.’” The Office Action further states that “[t]his argument references the following language in claim 141: ‘dispersing fine particles between said electrodes’[, t]hus claim 141 can not be broadened in this respect unless it is amended in another respect related to the surrendered subject matter.”

Notwithstanding the above-quoted statements in the Office Action, the Office Action does not identify specifically which particular subject matter the Examiner believes was surrendered during the prosecution of Claim 141, and instead simply concludes that “[t]hese [rejected reissue] claims each broadened the patent claim language by clear omission of any recitation related to the above claim recitations that were relied upon to secure a patent.” In any event, in Applicants’ view, even if the rejected reissue claims be deemed broader than the patent claims, and even if the arguments set forth regarding Claim 141 in the Amendment of December 4, 1996 be deemed to have surrendered subject matter, the only subject matter which was surrendered was injected donor or acceptor ions acting as independent atoms in a semiconductor, by virtue of the statement that “[w]hereas injected ions act as independent atoms in the

semiconductor, the dispersed fine particles of the instant invention are bulky in nature and do not act as individual atoms”, -- not any conceivable method which does not recite explicitly “dispersing fine particles between said electrodes”. That is, the arguments set forth in the Amendment of December 4, 1996 merely distinguished the particles of Claim 141 from the ions of the cited art by pointing out that the particles do not act as individual atoms (as do the ions). Clearly, Applicants are not attempting to recapture the subject matter “injected donor or acceptor ions acting as independent atoms in a semiconductor” in the reissue claims, especially since none of the reissue claims recite such subject matter.

Moreover, at least some of the reissue claims (Claims 12, 15, 16, 18, 19, 20, 21, 22, 33, 34, 35, 38, 41, 42/38, 42/41, 51, and 54) *do* explicitly recite particles, even though the word “dispersing” per se is not explicitly recited in those claims. Since, in at least one embodiment, those particles do not act as individual atoms, and since that same feature of the particles of Claim 141 was emphasized in the arguments in the Amendment of December 4, 1996, the subject matter of at least those reissue claims is *not* contrary to those arguments, whether or not those claims recite “dispersing”, and thus for this reason as well those claims do not present an improper recapture of any surrendered subject matter.<sup>2</sup> *Hester Industries, Inc. v. Stein, Inc.* 142 F.3d 1472, 1482 (Fed. Cir. 1998) (in order to determine whether subject matter surrendered by way of arguments alone has “crept back into” reissue claims, the reissue claims must be analyzed “to determine if they were obtained in a manner contrary to the arguments on which the surrender is based.”).

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<sup>2/</sup> Indeed, Claim 22 has been indicated as being allowable in the Office Action seemingly because of its recitation of “particles”.

Furthermore, in *Hester Industries, Inc.*, 142 F.3d at 1482-1483, the Federal Circuit held that “In the context of a surrender by way of argument, this principle[, material narrowing,] . . . may operate to overcome the recapture rule when the reissue claims are materially narrowed in other overlooked aspects of the invention . . . to allow the patentee to obtain through reissue a scope of protection to which he is rightfully entitled for such overlooked aspects.” For the following reasons, Applicants respectfully submit that the rejected reissue claims *are* materially narrowed with respect to any broadening relative to Claim 141 (and its issued version, patent Claim 3), and that the materially narrower features of those reissue claims were overlooked aspects of the invention during the prosecution of the application which matured into U.S. Patent 5,759,080, thereby avoiding the recapture rule.

The subject matter of Claim 141 (patent Claim 3) defined the invention claimed therein quite broadly, as a method of preparing an electron-emitting device, comprising the steps of (i) forming a semiconductor layer on a substrate, (ii) forming electrodes on the semiconductor layer, and (iii) dispersing fine particles between the electrodes. On the other hand, each of the reissue claims rejected in the Office Action of July 23, 2002 recites features relating to either Pd, carbon, a metal and a semiconductor, or an insulating material and a conductive material, and those features are narrower than the features recited in Claim 141, which never recited those narrower features. For example, unlike Claim 141, reissue Claims 12, 15, 21/12, 38, and 42/38 each recite providing a layer comprising an insulating material and at least some conductive particles, wherein at least some conductive particles protrude from a surface of the layer and the conductive particles comprise Pd, and Claims 54 and 57/54 recite providing an insulating layer including at least some conductive particles, wherein at least some

of the conductive particles protrude from a surface of the layer and the conductive particles comprise Pd. Also, in contrast to the subject matter of Claim 141, reissue Claim 6 recites providing a layer comprising a metal and a semiconductor, wherein the metal is Pd, Claim 8 further limits Claim 6 by reciting that the semiconductor is selected from the group consisting of carbon and SnO<sub>2</sub>, Claim 9 recites providing a layer comprising carbon and a metal, wherein the metal is Pd, Claims 36 and 42/36 recite providing a layer comprising Pd and a semiconductor, and Claims 37 and 42/37 recite providing a layer comprising carbon and Pd. Also unlike Claim 141, reissue Claim 11 recites providing a layer comprising carbon and a metal, wherein the layer comprises primarily carbon, Claims 16, 18-20, and 21/(16-18) recite providing a layer comprising carbon and at least some conductive particles, wherein the layer comprises primarily carbon, Claims 23, 26, 27, 39, and 42/39 recite providing a layer comprising a metal and a semiconductor, Claims 28, 31, 32, 40, and 42/40 recite providing a layer comprising an insulating material and a conductive material, and Claims 33-35, 41, 42/41 recite providing a layer including carbon and at least some conductive particles. Further unlike Claim 141, reissue Claims 43, 45, 49, 55, and 57/55 recite providing a semiconductor layer that includes a metal, Claims 50 recites providing an insulating layer that includes a conductive material, Claims 51 and 57/51 recite providing a layer comprising carbon and at least Pd particles, Claims 52 and 57/52 recite providing a semiconductor layer which includes Pd, and Claims 53 and 57/53 recite providing a carbon layer which includes Pd. Also unlike Claim 141, reissue Claims 56 and 57/56 recite providing an insulating layer that includes a conductive material.

Clearly, the mentioned layers and/or particles having the above-emphasized specific features recited in these reissue claims are more limiting than the Claim 141

semiconductor layer and particles, which are not necessarily limited to having such features.

Thus, those reissue claims are materially narrower than the subject matter of Claim 141 (and patent Claim 3) in at least these respects.

The rejected reissue claims also are believed materially narrowed relative to Claim 141 (and patent Claim 3) in that Claims 6, 8, 9, 11, 12, 15, 16, 18, 19, 20, 21, 22, 36, 37, 38, 42/36, 42/37, 42/38, 43, 45, 51-54, 57/51, 57/52, 57/53, and 57/54 each recite disposing a pair of electrodes *on a substrate*, and Claims 23, 26-28, 31-35, 39-41, 42/39, 42/40, 42/41, 49, 50, 55, 56, 57/55, and 57/56 each recite disposing a first electrode on a surface of a substrate and disposing a second electrode on an upper surface of an insulating layer, neither of which features were ever explicitly recited in Claim 141 (patent Claim 3), or argued to obtain its patentability.

Since at least the above-mentioned features of the rejected reissue claims are materially narrower relative to the subject matter of Claim 141 (and patent Claim 3), and those features were overlooked aspects of Applicants' invention during the prosecution of the application which matured into U.S. Patent 5,759,080, since they were never claimed or argued to obtain allowance of a claim in that application (*see Hester Industries, Inc.*, 142 F.3d at 1482-1483, which describes overlooked narrowing aspects of an invention as being significant in the context of a surrender by way of argument), Applicants believe that they are rightfully entitled to obtain through reissue the scope of protection provided by the rejected reissue claims.

Furthermore, Claim 141 never recited a method of fabricating an electron source that includes a plurality of electron-emitting devices, as recited in Claims 36-41 and 51-56, or a method of fabricating an image forming apparatus which includes an electron source and a source plate, as recited in Claims 42 and 57, and no arguments were ever presented regarding



that subject matter during the prosecution of Claim 141. Thus, Applicants did not, and could not, surrender any such subject matter during the prosecution of Claim 141. *See Ball Corp. v. United States* 729 F.2d 1429, 1437 (Fed. Cir. 1984) (“The proper focus is on the scope of the claims, not on the individual feature or element purportedly given up during prosecution of the original application”; reissue claims were held intermediate in scope, broader than the patent claims, yet narrower than the canceled claims).

Accordingly, for all of the foregoing reasons, it is believed that the rejected reissue claims pending in this application do not present an improper recapture of subject matter surrendered in association with Claim 141, and that the Section 251 rejection based on Claim 141 has been obviated. Therefore, withdrawal of that rejection is respectfully requested.

#### Comments Regarding Claims 137 and 144

With regard to Claims 137 and 144, the Office Action states that those claims were amended “to overcome rejection thereof by the addition of . . . ‘forming electrodes opposed to each on a substrate; forming between the electrodes an insulating layer in which fine particles are completely exposed; and etching the insulating layer so as to partially expose the fine particles’.” The Office Action also states that “[s]ubsequently, the examiner required the applicant to add ‘and in contact therewith’ to each claim after ‘between the electrodes’[, t]herefore, the amended language as modified can not be broadened unless amended in another respect related to the surrendered subject matter.”

Again, notwithstanding these statements, the Office Action does not specify explicitly which particular subject matter the Examiner believes was surrendered in relation to

Claims 137 and 144, and instead simply concludes that “[t]hese [rejected reissue] claims each broadened the patent claim language by clear omission of any recitation related to the above claim recitations that were relied upon to secure a patent.”

Applicants respectfully submit that, even if the rejected reissue claims be deemed broader than the patent claims, and even if subject matter be deemed to have been surrendered in Claims 137 and 144 by virtue of the Amendment of December 4, 1996 and the Examiner’s Amendment attached to the Notice of Allowance of February 5, 1997, the only subject matter which could have been surrendered by the former Amendment was subject matter canceled from those claims in that Amendment (in particular, the introducing step of Claim 137 and the introducing and etching steps of Claim 144, in their original versions), and the only subject matter surrendered by virtue of the Examiner’s Amendment was the difference between forming an insulating layer (Claim 137) or semiconductor layer (Claim 144) between, and in contact with, electrodes, and forming an insulating layer (Claim 137) or semiconductor layer (Claim 144), respectively, between electrodes, but not necessarily in contact therewith. Clearly, Applicants are not attempting by virtue of the reissue claims to recapture such a minor difference in the latter subject matters, or the introducing step of Claim 137 and the introducing and etching steps of Claim 144, especially in view of the overall scope of the reissue claims, and their inclusion of at least some narrower features (e.g., the specific materials of the recited layers or particles) which were never recited or surrendered in Claims 137 and 144. Indeed, Applicants did not, and could not, surrender the claim scope of a method of fabricating an electron source that includes a plurality of electron-emitting devices, as recited in reissue Claims 36-41 and 51-56, or a method of fabricating an image forming apparatus which includes an electron source and

a source plate, as recited in Claim 42 and 57, during the prosecution of Claims 137 and 144 in Application No. 08/479,000, since Claims 137 and 144 were directed to a method of preparing an electron-emitting device, and thus never had the same scope as those reissue claims, and no arguments surrendering a method for fabricating an electron source or image-forming apparatus were ever presented with regard to Claims 137 and 144 in that application.

Moreover, for the following reasons, Applicants submit that the rejected the reissue claims *are* materially narrowed relative to any subject matter which may have been surrendered in Claims 137 and 144 (and the subject matter of corresponding patent Claims 1 and 2). *See, e.g., Ball Corp. v. United States*, 729 F.2d 1429, 1438 (Fed. Cir. 1984) (holding that reissue claims compared to *cancelled* claims and determined to be narrower than the *cancelled* claims were allowable).

The subject matters canceled from Claims 137 and 144 defined the respective claimed inventions quite broadly. For example, the subject matter canceled from Claim 137 in the Amendment of December 4, 1996 was “introducing fine particles into an insulating layer, said fine particles being enclosed in the insulating layer so as to partially expose said fine particles.” The subject matter canceled from Claim 144 in the Amendment of December 4, 1996 was “(i) introducing fine particles into a semiconductor layer, said fine particles being completely enclosed in the semiconductor layer; (ii) etching said semiconductor layer so as to partially expose said fine particles.” Also, as pointed out above, the only subject matter canceled by virtue of the Examiner’s Amendment (attached to the Notice of Allowance of February 5, 1997) was the difference between the respective subject matters of Claims 137 and 144 after the Examiner’s Amendment and the respective subject matters of those claims existing immediately

prior to that Examiner's Amendment, relating merely to the relationship between an insulating layer (Claim 137) or semiconductor layer (Claim 144) and electrodes.

On the other hand, as pointed out above, each of the pending reissue claims rejected in the Office Action recites features relating to either Pd, carbon, a metal and a semiconductor, or an insulating material and a conductive material, and those features are narrower than subject matter from Claims 137 and 144, which never recited those features. For example, unlike Claims 137 and 144, reissue Claims 12, 15, 21/12, 38, and 42/38 each recite providing a layer comprising an insulating material and at least some conductive particles, wherein at least some conductive particles protrude from a surface of the layer *and the conductive particles comprise Pd*, and Claims 54 and 57/54 recite providing an insulating layer including at least some conductive particles, wherein at least some of the conductive particles protrude from a surface of the layer *and the conductive particles comprise Pd*. Also, in contrast to the subject matters of Claims 137 and 144, reissue Claim 6 recites providing a layer comprising a metal and a semiconductor, *wherein the metal is Pd*, Claim 8 further limits Claim 6 by reciting that the semiconductor is selected from the group consisting of carbon and SnO<sub>2</sub>, Claim 9 recites providing a layer comprising carbon and a metal, wherein the metal is Pd, Claims 36 and 42/36 recite providing a layer comprising Pd and a semiconductor, and Claims 37 and 42/37 recite providing a layer comprising carbon and Pd. Also unlike Claims 137 and 144, reissue Claim 11 recites providing a layer comprising carbon and a metal, wherein the layer comprises primarily carbon, Claims 16, 18-20, and 21/(16-18) recite providing a layer comprising carbon and at least some conductive particles, wherein the layer comprises primarily carbon, Claims 23, 26, 27, 39, and 42/39 recite providing a layer comprising a metal and a

semiconductor, Claims 28, 31, 32, 40, and 42/40 recite providing a layer comprising an insulating material and a conductive material, and Claims 33-35, 41, 42/41 recite providing a layer including carbon and at least some conductive particles. Further unlike Claims 137 and 144, reissue Claims 43, 45, 49, 55, and 57/55 recite providing a semiconductor layer that includes a metal, Claims 50 recites providing an insulating layer that includes a conductive material, Claims 51 and 57/51 recite providing a layer comprising carbon and at least Pd particles, Claims 52 and 57/52 recite providing a semiconductor layer which includes Pd, and Claims 53 and 57/53 recite providing a carbon layer which includes Pd. Also unlike Claims 137 and 144, reissue Claims 56 and 57/56 recite providing an insulating layer that includes a conductive material.

It is believed that the layers and/or particles having the specific narrower features referred to above in the mentioned reissue claims are more limiting than the insulating layer and particles of Claim 137 and the semiconductor layer and particles of Claim 144, since no such narrower features were ever explicitly recited in Claims 137 and 144. Thus, those reissue claims are materially narrower in at least the foregoing respects relative to the subject matters of Claims 137 (and patent Claim 1) and 144 (and patent Claim 2).

Reissue Claims 23, 26-28, 31-35, 39-41, 42/39, 42/40, 42/41, 49, 50, 55, 56, 57/55, and 57/56 also are believed materially narrowed relative to Claims 137 (and patent Claim 1) and Claim 144 (patent Claim 2) in that each reissue claim recites disposing a second electrode on an upper surface of an insulating layer, which feature was never explicitly recited in Claims 137 (patent Claim 1) and 144 (patent Claim 2), or argued to obtain their patentability. Instead, in their allowed forms, Claims 137 and 144 recited, in part, merely “forming electrodes opposed to

each other on a substrate”, and, in their original forms, Claims 137 and 144 did not even recite electrodes.

Moreover, even if the rejected reissue claims replace the introducing step canceled from Claim 137, and the introducing and etching steps canceled from Claim 144 (and the steps of forming and etching a layer of corresponding patent Claims 1 and 2), with a step of providing a layer (Claims 6, 8, 9, 11, 12, 15, 16, 18-21, 36, 37, 38, 42/(36-38), 43, 51, 52, 53, 54, and 57/(51-54)) or steps of forming a layer and providing a layer (Claims 23, 26, 28, 31, 32, 33, 34, 35, 39, 40, 41, 42/(39-41), 49, 50, 55, 56, 57/55, and 57/56), each nonetheless relates to a recited layer, and thus, because the layers of the reissue claims have the above-described narrower features which were never recited in Claims 137 and 144 (and patent Claims 1 and 2), those reissue claims are believed clearly narrower in a material respect compared with any corresponding broadening (e.g., with respect to a layer) of those claims, so as to avoid the recapture rule. Indeed, even if the rejected reissue claims do not recite explicitly “introducing” or “introducing” and “etching”, those claims still are believed more restrictive in at least one significant respect than required by U.S. Patent 3,735,186 (Klopfer et al.), which was cited in the Office Action of June 4, 1996 and in the Examiner’s Amendment attached to the Notice of Allowance dated February 5, 1997 in Application No. 08/479,000, especially since Klopfer et al. is not seen to teach or suggest at least the above-emphasized narrower features of those reissue claims. *See, e.g., Application of Donald Richman*, 409 F.2d 269, 274-275 (USCCPA 1969) (refusing to accept proposition that a limitation added to a claim to obtain allowance cannot be broadened by reissue if the limitation is more restrictive than the prior art required).

Moreover, Claim 144 was never formerly rejected over prior art in Application

No. 08/479,000, and instead was rejected under 35 U.S.C. § 112, second paragraph, in the Office Action dated June 4, 1996. Thus, it is submitted that, even if Claim 144 be deemed *arguendo* to have been amended to overcome the Section 112 rejection, this does not mean that the rejected reissue claims cannot be broadened in any respect relative to that Claim 144 (or issued patent Claim 2), especially since the subject matter of the rejected reissue claims is believed to comply fully with the requirements of Section 112, second paragraph, and, in fact, those reissue claims have not been rejected as failing to comply with that statute. Indeed, owing to the reissue claims' compliance with Section 112, second paragraph, those claims could not possibly improperly recapture any subject matter surrendered from original Claim 144, which in the view of the Patent and Trademark Office, did not comply with Section 112, second paragraph, and therefore Applicants should not now be prevented from presenting those reissue claims in this application merely because original Claim 144 was amended to overcome the Section 112 rejection.<sup>3</sup>

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<sup>3/</sup> Furthermore, as stated in the Supplemental Reissue Declaration filed on March 13, 2002, one of the errors in U.S. Patent 5,759,080 is that none of the original patent claims provides protection for a broader aspect of the invention as recited in reissue Claim 6, not requiring an etching step as recited in patent Claims 1 and 2 or a dispersing step as recited in patent Claims 3-5. Reissue Claim 6 addresses that error by not including such etching and dispersing steps in relation to the recited layer, but also recites that the layer includes certain features which, as described above, are believed narrower than those recited in the original patent claims. Thus, even if Claim 6 be deemed broader in a way that is material to the error supporting reissue, that claim also is believed narrower in a way material to the error, and thus for this reason, it is believed that Applicants should not be barred from obtaining patent protection for the subject matter of at least Claims 6. *Patecell v. U.S.*, 12 USPQ2d 1440, 1447 (Cl. Ct. 1989) ("the recapture rule should not bar a patentee from securing a reissue claim that is broader in a material respect than a cancelled claim when . . . the reissue claim also is narrower than the cancelled claim in a way that is material to the 'error.'").

Also, in order to clarify the record, it is noted that, as a result of an inadvertent error, the Information Disclosure Statement dated November 1, 2002 directed the Examiner's attention to the serial number of the present reissue application. This is not to be construed as an admission that the reissue application is, or is considered to be, prior art and material to

Since, for the above reasons, the rejected reissue claims are deemed narrower in at least some material respects relative to any corresponding broadening of those claims, and also relative to the subject matters of Claims 137 (and patent Claim 1) and 144 (patent Claim 2), Applicants respectfully submit that they are rightfully entitled to obtain through reissue the scope of protection provided by the rejected reissue claims.

Accordingly, for all of the foregoing reasons, it is believed that the Section 251 rejection based on Claims 137 and 144 has been obviated, and its withdrawal is therefore respectfully requested.

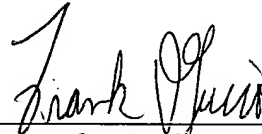
Added Claims 58-62 recite features which are similar in many respects to those of Claim 22 relating to the diameter of a particle being in a range of several tens of angstroms to several micrometers. Since the Office Action indicates that the relevant recitations of Claim 22 recite patentable subject matter, Claims 58-62 are believed to be patentable, at least because they recite features substantially similar features to those of Claim 22.

In view of all of the foregoing comments, all of the claims pending in this reissue application are believed allowable, and thus favorable reconsideration and early passage to issue of the application are respectfully requested.



Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



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